

Chapter 3

The Right to Public Privacy under Surveillance: CCTV Technology and the Myth of ‘Public Security’

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ABSTRACT

This chapter is critically commenting on the augmenting policy of public surveillance through the ‘Public Camera Surveillance’ system (CCTV technology) in Greece and in other countries such as the UK, USA, Canada, and Australia. It presents the arguments in favor and against such policies and the main threats that such policy-making poses for the freedom of the individual as represented in the relevant jurisprudence of the ECtHR. The main argument of the presentation underlines the need for the interpretive deduction of a right to anonymity or otherwise of a right to public privacy from the traditional notion of privacy. This right enables the individual to enjoy his/her privacy in public, thus allowing him/her to circulate in public assured that his/her presence will remain anonymous and permitting him/her to merge within the rest of the crowd. Such a right is specifically valuable in order to protect the political autonomy of the individual as a participant of demonstrations and public movements or manifestations under the precondition that his/her deeds do not merit the state’s intervention. The presentation closes with some remarks on the changing social and political ethos that brings forward the demand of public surveillance as a need for public safety.

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A GLOBAL AND GREEK OVERVIEW OF THE 'PUBLIC CAMERA SURVEILLANCE' PHENOMENON

The famous Orwell phrase could adequately describe the state of affairs as far as the expansion of public surveillance in all over the world is concerned: 'Big Brother is watching you' (Orwell, 1948). For many this phrase provides the comfort of public safety in an unsafe, especially after the September 11th era. Yet, for others it marks the transition to a society that threatens fundamental rights and freedoms. The reality is the following. As international statistics inform us, in the *USA* since 2003 the CCTV systems (Closed Circuit Television) have expanded from 2,000,000 to 30,000,000. It is reported that nowadays 2,000,000-3,000,000 CCTV systems are introduced each year in order to serve commercial, government or research purposes (McCahill, C. Norris, 2002). After the September 11th in the area of Manhattan more than 10,000 functioning CCTV systems are functioning, especially in the famous 'Ring of Steel,' an area that encircles Wall Street and the World Trade Center. The most sophisticated system of 'Public Camera Surveillance' can be found in Washington D.C. where the CCTV technology based on 'satellite optics' provides with the most accurate system of surveillance globally. As far as pedestrians, workers, and everyday shoppers are concerned the use of such systems approximately catches them at 200-300 instances of their everyday life (Aaronovitch, 2009). In the *UK* only there are 800 programs of public surveillance in action and approximately 2,000,000-3,000,000 CCTV systems functioning—fortunately only 200,000-400,000 of them in public areas. The *Princedom of Monaco* is a 100% surveilled area, whereas *Australia* is using extensively the CCTV systems with 40,000 functioning in Melburn. *Japan* and *China* also use CCTV systems extensively. Since the Olympic Games 260,000 CCTV systems are functioning in Pei Jin only.

In *France* approximately 340,000 CCTV systems are in use, a number augmented after the terrorist attacks in Spain and the UK. In *Sweden*, the application of hidden CCTV systems is banned. The use of 'Public Camera Surveillance' is issued only for research or public interest purposes and only when the public is adequately informed of its presence according to the 'Public Camera Surveillance Act [56]' of 1998 (Klamberg, 2010). In *Italy*, the national Data Protection Authority requires a specific survey on the necessity of 'Public Camera Surveillance' in order to authorize its use. In the *Netherlands*, 'Public Camera Surveillance' is permitted only if the public is priority informed about the presence of CCTV systems in function. In *Switzerland* the CCTV systems employed bear the capacity to automatically encrypt the information which the competent authorities can decode, only in cases that criminal actions have taken place. *Greece* provides with a much lower statistics (a little more than 1000 CCTV systems in function, mainly used in monitoring traffic circulation) as most of the EU countries due to the reluctance and limitations that the national Data Protection Authorities poses.

In Greece, the public and theoretical dialogue concerning public surveillance was initiated by the Parliamentary legislation (Act 3625/2007) which acknowledged the legitimate use of cameras during public demonstrations and manifestations in Greece. The scope of the legislative intervention was to protect public safety, public security, and private property against acts of violence that were occurring during such public demonstrations. The legislative intervention followed an 'institutional' conflict between the Attorney of the Court of Cassation and the Council of the Data Protection Authority, which ended in a political crisis and the consequent, resign of all members of the Independent Authority (Anthopoulos, 2011). Subsequently the relevant legislation is still existing but not enacted. More recently in the summer of 2009 an amendment of the 'basic' data protection legislation (Law 2472/1997, Art. 8) has enabled

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